



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039
TRENTON, NEW JERSEY 08608-0039
<https://www.njstart.gov>
Telephone (609) 292-4886

MIKIE SHERRILL
Governor

AARON BINDER
State Treasurer

DR. DALE G. CALDWELL
Lt. Governor

AMY F. DAVIS, ESQ.
Acting Director

August 14, 2026

Via Electronic Mail Only jborek@genovaburns.com

Jennifer Borek, Esq.
Genova Burns LLC
494 Broad Street
Newark, NJ 07102

Re: I/M/O Bid Solicitation #23DPP00861 Working Buildings, LLC
Protest of Notice of Intent to Award
T2969 Facility Management and Operation of the Public Health, Environmental and
Agricultural Laboratory (PHEAL)

Dear Ms. Borek:

This final agency decision is in response to your letter dated July 28, 2026, on behalf of Working Buildings, LLC (Working Buildings), which was received by the Division of Purchase and Property's (Division) Hearing Unit (Protest). In that letter Working Buildings protests the July 14, 2026, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #23DPP00861 – T2969 Facility Management and Operation of the Public Health, Environmental and Agricultural Laboratory (PHEAL) (Bid Solicitation).

By way of background, on May 23, 2024, the Bureau issued the Bid Solicitation on behalf of the Division of Property Management and Construction (DPMC) for the New Jersey Department of Health (DOH). The purpose of this Bid Solicitation is to solicit Quotes for all aspects of the facility management, operation, maintenance and continued certification of the New Jersey Public Health, Environmental and Agricultural Laboratory (PHEAL). Bid Solicitation Section 1.1, *Purpose and Intent*. It is the intent of the State to award a Contract to that responsible Bidder whose Quote, conforming to this Bid Solicitation is most advantageous to the State of New Jersey (State), price and other factors considered. Ibid.

On June 11, 2024, in accordance with Bid Solicitation Section 2.5, *Optional Pre-Quote Conference*, an Optional Pre-Quote Conference was held which enabled all potential Bidders to review the Bid Solicitation and Quote submission procedures and requirements. In addition, a mandatory site visit was held on June 18, 2024 at the PHEAL facility.

Pursuant to Bid Solicitation Section 2.1, *Electronic Question and Answer Period*, an electronic portal enabling the Bureau to receive questions electronically was available to all potential Bidders until 2:00 P.M. Eastern Time on June 24, 2024, and a second *Electronic Question and Answer Period* opened on December 18, 2024 enabling the Bureau to receive questions electronically until 2:00 p.m. on December 24, 2024.

The following Bid Amendments were issued for this Bid Solicitation:

Bid Amendment	Date Issued	Contents
#1	7/24/24	Revised the Quote Opening Date and Revised Bid Solicitation Document.
#2	8/16/24	Revised the Quote Opening Date and Revised Bid Solicitation Document.
#3	9/12/24	Revised the Quote Opening Date and Revised Bid Solicitation Document.
#4	10/17/24	Revised the Quote Opening Date and Revised Bid Solicitation Document.
#5	11/21/25	Revised the Quote Opening Date and Revised Bid Solicitation Document.
#6	12/18/24	Revised the Quote Opening Date; Provided answers to Electronic Questions; Provided revised Bid Solicitation and Price Sheet Documents: Revised Attachment #7; Added New attachments # 8, 9, and 10; Reopened Q&A on 12/18/2024; Closed Q&A on 12/24/2024 at 2:00 pm.
#7	1/15/25	Revised the Quote Opening Date and provided answers to Electronic Questions.

On January 16, 2025, the Division's Proposal Review Unit (PRU) opened four (4) Quotes received by the submission deadline from Working Buildings, George S. Hall Inc. (GSH), TYS Solutions Services (TYS), and Upkeepia. After conducting an initial review of the Quotes for the compliance with mandatory Quote submission requirements, the PRU issued a warning letter to Upkeepia for not having a Business Registration Certificate issued by the Division of Revenue and Enterprise Services (DORES) at the time of Quote submission. The PRU then forwarded all four (4) Quotes to the Bureau for further review and evaluation consistent with the requirements of the Bid Solicitation Section 8.9, *Evaluation Criteria*.

Of the four Quotes reviewed and evaluated by the Bureau, both TYS Solutions Services and Upkeepia were deemed non-responsive for failure to attend the Mandatory Site Visit pursuant to Solicitation Section 2.4, which states in part: "*A Quote from any Bidder that was not represented or failed to register properly at the Mandatory Site Visit will be rejected.*" The remaining two Quotes were then distributed to the Evaluation Committee members. An initial kick-off meeting was held on July 24, 2025, where Committee members received details regarding evaluation steps and member expectations. Upon confirmation that the evaluation process was understood, with no questions, the Technical Quote was released for review on July 24, 2025. The Committee members individually reviewed and scored the Quote. The Committee then met on Thursday August 14, 2025, to collectively review, consider, and provide the final scores for the Technical Quote.

On June 26, 2026, the Bureau prepared a Recommendation Report which recommended that a Contract award be made to GSH, whose submitted Quote was most advantageous to the State, price and other factors considered. Accordingly, on July 14, 2026, the NOI was issued advising all Bidders that it was the State's intent to award a Contract consistent with the Bureau's Recommendation Report.

On July 28, 2026, prior to the close of the protest period, the Division's Hearing Unit received Working Buildings' Protest. By way of summary, Working Buildings protests the award to GSH alleging that GSH failed to attach resumes that were required under the Bid Solicitation, Working Buildings received an overall higher technical score, GSH submitted a quote that impermissibly relied on the use and hiring of existing PHEAL staff that are currently employees of Working Buildings, and a deficiency in the Ownership Disclosure requirements under N.J.S.A. 52:25-24.2.

Although in-person presentation is permitted by N.J.A.C. 17:12-3.3(e), it should be noted that “[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director.” Further, “[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing.” N.J.A.C. 17:12-3.3(d). I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the Evaluation Committee Report, the Bureau’s Recommendation Report, the relevant statutes, regulations, case law, and the protest submitted by Working Buildings. The issues raised in the protest were sufficiently clear such that a review of the record of this procurement has provided me with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits of the protest submitted by Working Buildings on the written record, as such an in-person hearing is not warranted. I set forth herein the Division’s Final Agency Decision.

DISCUSSION

Working Buildings’ primary dispute in its Protest is that GSH failed to submit the resumes required under Bid Solicitation Section 3.22, Resumes, for members of the “Key Staff” of its proposed team. Specifically, GSH did not submit resumes for Ed Brown, Paul Szalwinski, and Gerard Markert. Bid Solicitation Section 3.22 sets forth the requirement that Bidders submit resumes for key staff positions;

3.22 RESUMES

The Bidder should submit a resume for an On-Site Supervisor. The On-Site Supervisor resume should include, at a minimum, the following:

- Possession of an engineering degree specializing in mechanical or electrical sciences and/or a facilities management certification and/or ten (10) years of documented experience with references.
- Previous experience in providing operation/maintenance of a laboratory, health care facility or physical plant with operations commensurate with the PHEAL, three (3) years of which shall have been in a supervisory capacity.
- At least three (3) years of experience managing boilers equal to or greater than 250 HP each, chillers equal to or greater than 700 tons each, a Phoenix air control valve system(s) and Johnson Controls Metasys system integrations/interactions with laboratory, health care facility or physical plant equipment/environments.

The Bidder shall submit resumes for key staff. The key staff resumes should include, at a minimum, the following:

- Individual with a minimum of five (5) years general maintenance/operational experience with an emphasis on performing electrical/electronic maintenance and repair, in a laboratory, health care facility or physical plant with operations commensurate with the PHEAL.
- Individual with a minimum of five (5) years general maintenance/operational experience with an emphasis on performing HVAC maintenance and repair in a laboratory, health care facility or physical plant with operations commensurate with the PHEAL. This individual must be refrigerant certified as well. The individual must have at least three (3) years’ experience working with Phoenix control valves system(s) and Johnson Control Metasys System integrations/interactions with laboratory, health care facility or physical plant equipment/environments.
- Individual with a minimum of five (5) years general maintenance/operational experience with an emphasis on maintenance and repairing plumbing in a laboratory, health care facility or physical plant with operations commensurate with the PHEAL. The individual must have at least three (3) years’ experience working with de-ionized water systems, chillers equal to or greater than 700 tons, backflow prevention equipment, water softener systems and hot water heating systems.
- Individual with a minimum of five (5) years general maintenance/operational experience with an emphasis on performing refrigeration maintenance and repair in a laboratory, health care facility or physical plant with operations commensurate with the PHEAL. The individual shall be responsible for inspecting, testing, repair, and maintenance of all built-in, and well as laboratory equipment such as -80°c and -20°c reach in freezers, refrigerators, portable chillers, ice makers, etc.

A review of the record shows that Bureau incorrectly determined that GSH was responsive to the Bid Solicitation’s requirements. As noted above, Bid Solicitation Section 3.22, *Resumes*, clearly states that that “[t]he Bidder **shall** submit resumes for key staff.” Emphasis added. As indicated in the screenshot from GSH’s resume, Ed Brown, Paul Szalwinski, and Gerard Markert were all identified as “key staff.”

To prepare for possible award and mobilization of the contract, GSH has taken the preliminary steps to contact and assess the willingness of several present NJ PHEAL key staff members, to see if they would consider transitioning to GSH. We are pleased to convey that the following key personnel have expressed their willingness to transition to GSH should the contract change hands.

- | | |
|-------------------|---|
| • Joe Franklin | Facilities Manager |
| • Ed Brown | Assistant Facilities Manager & Boiler Chief |
| • Paul Szalwinski | Facilities Technician |
| • Spencer Johnson | Facilities Technician – Lead Electrician |
| • Gerard Markert | Facilities Technician - Refrigeration |

[GSH Quote, page 118.]

Based on the failure of GSH to submit resumes, the Bureau came to the incorrect determination that GSH was responsive to the material requirements of the Bid Solicitation, and the Bureau incorrectly provided GSH to the Evaluation Committee for scoring.

A review of the record shows that GSH attended the Pre-Quote Conference which utilizes a PowerPoint slide presentation. Slide 5 of that presentation informs potential bidders to “Quotes on time addressing all mandatory requirements including forms, or Quote may be deemed non-responsive. ‘Shall’ denotes a mandatory requirement”. This information, along with the guidance provided in the Bid Solicitation sections on resumes, supports a determination that GSH failed to provide all of the mandatory resumes with its Quote.

GSH could argue that it would be willing to provide the resumes after Quote opening to remedy its submission deficiency. However, allowing GSH to revise or produce additional information after the Quote submission deadline would result in an impermissible supplementation of the Quote, which the Division cannot allow as doing so would be contrary to the Court’s holding in In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995). In On-Line Games, the Appellate Division held that “in clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP”. *Id.* Here, the Division cannot accept any supplemental resumes, as doing so is an impermissible supplementation, change and correction to the submitted Quote.

The New Jersey Courts have long recognized that the purpose of the public bidding process is to “secure for the public the benefits of unfettered competition.” Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). To that end, the “public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good.” Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997). The objective of New Jersey’s statutory procurement scheme is “to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition.” Barrick v. State of New Jersey, 218 N.J. 247, 258 (2014) (citing Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985)).

When evaluating Quotes received, the Division is charged with ensuring that the Contract is awarded to that responsible Bidder whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price and other factors considered. Bid Solicitation Section 1.1 *Purpose and Intent*. A responsive Quote is a Quote that is deemed by the Division and/or evaluation committee to have adequately addressed all material provisions of a Bid Solicitation's terms and conditions, specifications, and other requirements. N.J.A.C. 17:12-1.3. A Quote that is not compliant or responsive to the material requirements of the Bid Solicitation shall not be eligible for further consideration for award of a Contract and the bidder offering said Quote shall receive notice of the rejection of its Quote. N.J.A.C. 17:12-2.7(c).

It is firmly established in New Jersey that material deviations may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co., supra, 138 N.J. at 315, the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). "In River Vale, the court declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity." In re Protest of Award of On-Line Games Prod. and Operation Servs. Contract, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, supra, 127 N.J. Super. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, supra, 127 N.J. Super. at 216.]

"If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all." On-Line Games, supra, 279 N.J. Super. at 595 (citing River Vale, supra, 127 N.J. Super. at 222).

Here GSH's Quote failed to attach three mandatory resumes for key staff. Even if the Bureau could be ensured the contract would be performed according to the specifications, permitting GSH to provide information post-Quote opening when the option is not available to the other bidders, both practically or legally, would place GSH in a position of advantage over the other bidders. This makes the failure to provide the three mandatory resumes a material deviation that cannot be waived. Thus, GSH was ineligible for evaluation and consideration of an award.

It should be noted that the practice of newly awarded Contractors hiring existing personnel is not new, or even unique to this Contract, and is a common practice when a State contract is awarded to a new contractor, such as the recently awarded contract for armed and unarmed security guard services. In fact, the Evaluation Committee took the potential risk into account with its scoring, by stating "GSH's reliance on the incumbent's staff at the start of the Contract may pose an issue, as there is no way to know if the incumbent's current employees would leave to join GSH. However, the overall concern is low." Recommendation Report, Page 18. The Recommendation Report supports that the Evaluation Committee was thoughtful in its review, and was not arbitrary, capricious, or unreasonable of its review of the personnel provided by each bidder. While GSH is not eligible for award due to the responsiveness issues discussed above, the Evaluation Committee Report provides sufficient support for the originally intended award, and that the Evaluation Committee was not arbitrary, capricious, or unreasonable in its determinations.

Here the Division clearly picked the Quote that “is most advantageous to the State, price and other factors considered.” To the extent that the Protest argues further that the Evaluation Committee did not reach consensus as to the final award, such consensus is not needed or required. The ultimate decision remains at the discretion of the Director. The Divisions regulations make clear that “the Director shall review the award recommendation and documentation presented by the evaluation committee or the assigned Division staff member, *and may accept it, modify it, reject it*, or refer the modified award recommendation and documentation back to the evaluation committee or assigned Division staff member for additional consideration.” N.J.A.C. 17:12-2.7(g)[emphasis added].

Finally, Working Buildings argues that GSH failed to complete the Ownership Disclosure requirements as set forth in N.J.S.A. 52:25-24.2. The subject procurement was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 3.0, *Quote Submission Requirements*, which states in pertinent part that:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Bidder is a corporation, partnership or limited liability company, the Bidder must disclose all 10% or greater owners by (a) completing and submitting the Ownership Disclosure Form with the Quote; (b) if the Bidder has submitted a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement, the Division may rely upon that form; however, if there has been a change in ownership within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote; or, (c) a Bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

NOTE: In lieu of completing and submitting the paper-based form, the Bidder has the option to complete this form online in [NJSTART](#) on the “Terms and Categories” Tab.

A Bidder’s failure to submit the information required by N.J.S.A. 52:25-24.2 will result in the rejection of the Quote as non-responsive and preclude the award of a Contract to said Bidder.”

[Bid Solicitation Section 3.13.2.]

GSH submitted a completed Ownership Disclosure Form and submitted an attachment that details the ownership of the various corporate entities and the Quote also includes the necessary address information. The Division determined that the Bidder’s ownership disclosure satisfied the Bid requirements. The requirement to disclose any person or entity holding a 10 percent or greater beneficial interest does not mandate a negative requirement to disclose any person or interest holding a 10 percent or

less beneficial interest. The New Jersey Trust Code referenced in Working Buildings' protest is inapplicable to the disclosure required here unless there are individuals with a beneficial, not trustee, interest, of 10 percent or greater. Thus, the disclosure was adequate and no additional information is required to satisfy the statutory law.

The Division's Director has broad discretion to select among qualified bidders in public contracting matters. See N.J.S.A. 52:34-12(d); In re Jasper Seating Co., Inc.'s Request for Reconsideration Regarding Request for Proposal No. 07-X-37695, 406 N.J. Super. 213, 222-24 (App. Div. 2009). N.J.S.A. 52:34-12(d) makes clear that the Division's Director has the exclusive discretion to determine "which bid will be most advantageous to the State, 'price and other factors considered.'" Commercial Cleaning v. Sullivan, 47 N.J. 539 (1966). The New Jersey Courts have long recognized that the purpose of the public bidding process is to "secure for the public the benefits of unfettered competition." Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). To that end, the "public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good." Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997).

Based on the review of the Quotes submitted, the Bureau recommended a Contract award to GSH because its Quote was the most advantageous to the State, price and other factors considered, as is required by New Jersey law. However, as outlined above, the Quote submitted by GSH is non-responsive to the Bid Solicitation's mandatory requirements making GSH ineligible for award. Thus, the Division's award to GSH must be canceled and remanded to the Bureau for award to Working Buildings, the only remaining responsive bidder.

CONCLUSION

Based upon the foregoing, the July 14, 2026, Notice of Intent to Award to George S. Hall, Inc., is canceled. I remand the matter to the Bureau so that the Contract be awarded to Working Buildings, LLC for the reasons outlined above. This is my final agency decision.

Thank you for your company's continuing interest in doing business with the State of New Jersey, I encourage you to log into [NJSTART](#) to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities.

This is the Division's final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,



Cory K. Kestner
Chief Hearing Officer

CKK:DPK

c: R. Palko (ryan.palko@gshgroup.com)
C. Clarke
M. Maciolek
H. Gobrial